

House Bill 481 (AS PASSED HOUSE AND SENATE)

By: Representatives Graves of the 12th, Burkhalter of the 50th, Keen of the 179th, Ehrhart of the 36th, Rice of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the Jobs, Opportunity, and Business Success Act of 2009; to amend and enact
2 provisions intended to provide for tax relief and encourage employment opportunities and
3 business stimulation; to amend Title 14 of the Official Code of Georgia Annotated, relating
4 to corporations, partnerships, and associations, so as to provide for a period of time for the
5 waiver of certain filing fees otherwise charged in connection with such entities; to amend
6 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
7 so as to provide that for a period of time employers who hire persons receiving employment
8 security benefits shall be entitled to a credit against employer contributions; to amend Title
9 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to
10 provide that a portion of net long-term capital gains shall be excluded from state taxable
11 income of corporations and individuals; to provide for credits against state income tax for
12 employers employing certain previously unemployed persons; to eliminate the requirement
13 for dealers to make returns and remittances with respect to estimated sales and use tax
14 liability; to eliminate the corporate net worth tax; to provide for other related matters; to
15 provide for an effective date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 This Act shall be known and may be cited as the "Jobs, Opportunity, and Business Success
19 Act of 2009."

20 **SECTION 2.**

21 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
22 and associations, is amended by revising Code Section 14-2-122, relating to fees for filings
23 related to business corporations, as follows:

24 "14-2-122.

25 (a) The Secretary of State shall collect the following fees and penalties when the
26 documents described in this Code section are delivered to him or her for filing:

27	<u>Document</u>	<u>Fee</u>
28	(1) Articles of incorporation.	\$ 100.00
29	(2) Application for certificate of authority.	225.00
30	(3) Annual registration.	30.00
31	(4) Penalty for late filing of annual registration.	25.00
32	(5) Agent's statement of resignation.	No fee
33	(6) Certificate of judicial dissolution.	No fee
34	(7) Articles of dissolution or intent to dissolve.	No fee
35	(8) Application of withdrawal.	No fee
36	(9) Application for reservation of a corporate name.	25.00
37	(10) Civil penalty for a foreign corporation transacting business in this state 38 without a certificate of authority.	500.00
39	(11) Statement of change of address of registered agent...\$5.00 per corporation 40 but not less than.	20.00
41	(12) Application for reinstatement.	100.00
42	(13) Certificate of conversion.	95.00
43	(14) Any other document required or permitted to be filed by this chapter . .	20.00
44	<u>(b) For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees</u> 45 <u>specified in paragraphs (1) and (2) of subsection (a) of this Code section shall be waived,</u> 46 <u>and there shall be no fee for such filings."</u>	

47 **SECTION 3.**

48 Said Title 14 is further amended by revising Code Section 14-9-1101, relating to fees for
49 filings related to limited partnerships, as follows:

50 "14-9-1101.

51 (a) The Secretary of State shall charge and collect for filing:

52	<u>Document</u>	<u>Fee</u>
53	(1) A certificate of limited partnership.	\$ 100.00
54	(2) A registration of a foreign limited partnership.	225.00
55	(3) An annual registration.	30.00
56	(4) Penalty for late filing of annual registration.	25.00
57	(5) Agent's statement of resignation.	No fee

58	(6) Certificate of cancellation.	No fee
59	(7) Application of withdrawal.	No fee
60	(8) Statement of change of address of registered agent or registered office...	
61	\$5.00 per limited partnership but not less than.	20.00
62	(9) An amendment to a certificate of limited partnership for the purpose of	
63	becoming a limited liability partnership.	100.00
64	(10) Certificate of election to become a limited partnership.	80.00
65	(11) Certificate of conversion.	95.00
66	(12) Application for reservation of a name.	25.00
67	(13) Any other document required or permitted pursuant to this chapter.	20.00
68	<u>(b) For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees</u>	
69	<u>specified in paragraphs (1) and (2) of subsection (a) of this Code section shall be waived,</u>	
70	<u>and there shall be no fee for such filings."</u>	

71 **SECTION 4.**

72 Said Title 14 is further amended by revising Code Section 14-11-1101, relating to fees for
 73 filings related to limited liability companies, as follows:

74 "14-11-1101.

75 (a) The Secretary of State shall collect the following fees when the documents described
 76 below are delivered to the Secretary of State for filing pursuant to this chapter:

77	<u>Document</u>	<u>Fee</u>
78	(1) Articles of organization.	\$ 100.00
79	(2) Articles of amendment.	20.00
80	(3) Articles of merger.	20.00
81	(4) Certificate of election under Code Section 14-11-212 (together with	
82	articles of organization).	95.00
83	(5) Application for certificate of authority to transact business.	225.00
84	(6) Statement of commencement of winding up.	No Fee
85	(7) Certificate of termination.	No Fee
86	(8) Application of withdrawal.	No fee
87	(9) Articles of correction.	20.00
88	(10) Application for reservation of a name.	25.00
89	(11) Statement of change of registered office or registered agent...\$5.00	
90	per limited liability company (foreign or domestic), but not less than. . .	20.00

(12) Registered agent's statement of resignation pursuant to subsection (d) of Code Section 14-11-209 or subsection (d) of Code Section 14-11-703.	No fee
(13) Certificate of judicial dissolution.	No fee
(14) Annual registration (foreign or domestic).	30.00
(15) Penalty for late filing of annual registration.	25.00
(16) Reinstatement fee.. . . .	100.00
(17) Any other document required or permitted to be filed by this chapter.	20.00
(18) Certificate of conversion.	95.00
(b) The Secretary of State shall collect the penalty provided for in paragraph (2) of subsection (c) of Code Section 14-11-711.	
(c) <u>For the period of time beginning July 1, 2009, and ending June 30, 2010, the fees specified in paragraphs (1) and (5) of subsection (a) of this Code section shall be waived, and there shall be no fee for such filings."</u>	

SECTION 5.

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by revising Code Section 34-8-156, relating to the State-wide Reserve ratio and reduction in tax rate, by adding a new subsection as follows:

"(g)(1) The Commissioner shall make an expedited request within 15 days of the effective date of this Act for a determination by the United States secretary of labor that implementation of paragraph (3) of this subsection is in conformity with federal law. If the United States secretary of labor determines that paragraph (3) of this subsection is not in conformity with federal law and cannot be adjusted procedurally by the Commissioner pursuant to Code Section 34-8-93 pending action of the General Assembly to bring about conformity with federal law, paragraph (3) of this subsection shall not become effective. Upon such determination the Commissioner shall take all necessary steps to obtain a waiver of conformity with federal law from the United States secretary of labor. If such waiver is granted, paragraph (3) of this subsection shall become effective immediately. If the United States secretary of labor determines that paragraph (3) of this subsection could be implemented in conformity with federal law if procedurally adjusted by the Commissioner, the Commissioner shall exercise the authority granted under Code Section 34-8-93 to make such adjustments and paragraph (3) of this subsection shall become effective immediately following such adjustment. If the United States secretary of labor determines that paragraph (3) of this subsection is in conformity with federal law, paragraph (3) of this subsection shall become effective immediately.

(2) In the event paragraph (3) of this subsection becomes effective, it shall not be implemented unless the Commissioner determines that the employer contribution and reimbursement liability shall not increase as a result of such implementation.

(3) If this paragraph becomes effective, for calendar quarters beginning on or after July 1, 2009, there shall be a credit to be known as the Georgia Works Tax Credit. The amount of the credit shall be not less than \$25.00 and not more than \$125.00 per individual employee per calendar quarter, as further described in this subsection. The determination of the amount of the credit, within the permissible range, shall be made and periodically revised by the Commissioner based on the Commissioner's evaluation of conditions in the Georgia labor market, the state of the economy, and the State-wide Reserve Ratio. The credit may be claimed by an employer for up to four calendar quarters with respect to an individual hired by that employer for services to be performed in this state under the following conditions:

(A) Such individual:

(i) Has filed a claim for unemployment compensation in this state and is currently receiving weekly unemployment compensation benefits on that claim under the provisions of Article 7 of this chapter and such benefits are chargeable to the experience rating account of an employer under Code Section 34-8-157;

(ii) Has been profiled by the department as likely to exhaust benefits;

(iii) Has no return to work date or promise of future employment; and

(iv) Has at least eight weeks of benefit eligibility remaining on his or her current claim at the time the employer hires the individual;

(B) The credit for each such hired individual per calendar quarter may be claimed on the reports required to be filed under Code Section 34-8-165 as a reduction from amounts otherwise due with respect to each of the four calendar quarters immediately following the hire date of the individual; provided, however, that the credit may not be claimed for any hired individual with respect to more than one hiring by the employer claiming the credit or for more than four calendar quarters with respect to that one hiring;

(C) For each calendar quarter for which the credit is claimed, such individual shall be continuously employed by the employer claiming the credit, and such individual's employment with that employer shall consist of at least 30 hours per week during each week of that calendar quarter;

(D) The credit shall be timely claimed for the calendar quarter to which the credit is applicable, and in no event later than the last day of the reporting month following the end of the calendar quarter to which the credit is applicable. The credit shall not be refundable. The credit cannot reduce tax liability below zero; provided, however, that

the credit, if properly and timely claimed, may be carried forward and applied against contributions due in any subsequent calendar quarter in the same calendar year as claimed. Any unused credit remaining at the end of a calendar year may not be carried forward to another calendar year and shall be deemed to have expired; and

(E) No credit shall be claimed or taken by any employer who fails to timely file any report or to timely pay all amounts otherwise due for all calendar quarters during the calendar year for which the credit is claimed. In the event an employer has claimed a credit under this Code section and fails to timely file any report or to timely pay all amounts otherwise due during the year the credit is claimed, the amount of any credits claimed with respect to the calendar year shall be canceled and become delinquent as of the date originally due under Code Section 34-8-165 and subject to all the provisions of this article as if no credit had ever been available or claimed."

SECTION 6.

Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," is amended in Code Section 48-7-21, relating to taxation of corporations, by adding at the end of subsection (b) a new paragraph (16) to read as follows:

"(16)(A) For the taxable year beginning on or after January 1, 2010, and prior to January 1, 2011, there shall be subtracted from taxable income an amount equal to 25 percent of the total net amount of long-term capital gains subject to federal income taxation.

(B) For all taxable years beginning on or after January 1, 2011, there shall be subtracted from taxable income an amount equal to 50 percent of the total net amount of long-term capital gains subject to federal income taxation."

SECTION 7.

Said Title 48 is further amended in subsection (a) of Code Section 48-7-27, relating to computation of taxable net income of individuals, by deleting "and" at the end of paragraph (14); replacing the period at the end of paragraph (15) with "; and"; and adding a new paragraph (16) to read as follows:

"(16)(A) For the taxable year beginning on or after January 1, 2010, and prior to January 1, 2011, an amount equal to 25 percent of the total net amount of long-term capital gains subject to federal income taxation.

(B) For all taxable years beginning on or after January 1, 2011, an amount equal to 50 percent of the total net amount of long-term capital gains subject to federal income taxation."

SECTION 8.

Said Title 48 is further amended by adding a new Code section as follows:

"48-7-29.17.

(a) As used in this Code section, the term 'creditable employee' means an employee of an employer who:

(1) Is first employed by the employer on or after the effective date of this Code section and prior to July 1, 2010;

(2) Was unemployed at least four weeks immediately prior to becoming so employed;

(3) Remains so employed by the employer for at least 24 consecutive months;

(4) Executes and provides a notarized affidavit swearing or affirming that such employee is eligible to work in the United States because such person is either a United States citizen or a lawfully present alien according to federal law; and

(5) During the entire period of such employment receives monthly compensation in an amount at least equal to the average monthly employment compensation benefit paid to persons receiving employment compensation benefits in this state.

(b) An employer who has one or more creditable employees and who provides a notarized affidavit attesting to use of the federal employment verification system now known as 'E-Verify' or any future federal employment verification system shall be eligible to apply for and receive a credit against taxes imposed under this chapter. The amount of the credit shall be \$2,400.00 for each creditable employee. Eligibility for the credit shall be established as of the time the creditable employee completes 24 consecutive months of employment; and the credit shall be claimed for the taxable year in which the twenty-fourth month of such employment is completed.

(c) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding two years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The credit shall be claimed and granted in such manner as shall be specified by rules adopted by the commissioner; and such rules shall specifically provide for the manner of establishing the qualifying status of unemployment of the employee prior to employment. The average monthly employment security benefit shall be computed on a monthly basis by the Commissioner of Labor.

(e) For the purpose of determining whether an employee is employed by the employer under subsection (a) of this Code section, employment may include up to 13 weeks continuous prior service for the employer as a temporary employee of a staffing firm. As used in this Code section, staffing firm means an organization that hires its own employees and assigns them to a client to support or supplement the client's work force in special work

situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects."

SECTION 9.

Said Title 48 is further amended in Code Section 48-8-49, relating to dealers' sales and use tax returns, by revising subsection (b) as follows:

"(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer's average monthly payments for the last fiscal year.

(2)(A) If the estimated tax liability of a dealer for any taxable period prior to January 1, 2010, exceeds \$5,000.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. ~~This subsection~~ subparagraph shall not apply to any dealer unless during the previous fiscal year the dealer's monthly payments exceeded \$5,000.00 per month for three consecutive months or more nor shall this ~~subsection~~ subparagraph apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14. No local sales taxes shall be included in determining any estimated tax liability.

(B) If the estimated tax liability of a dealer for any taxable period on or after January 1, 2010, and prior to January 1, 2011, exceeds \$10,000.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subparagraph shall not apply to any dealer unless during the previous calendar year the dealer's monthly payments exceeded \$10,000.00 per month for three consecutive months or more nor shall this subparagraph apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls below the threshold specified in this subparagraph. No local sales taxes shall be included in determining any estimated tax liability.

(C) If the estimated tax liability of a dealer for any taxable period on or after January 1, 2011, and prior to January 1, 2012, exceeds \$20,000.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for

the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subparagraph shall not apply to any dealer unless during the previous calendar year the dealer's monthly payments exceeded \$20,000.00 per month for three consecutive months or more nor shall this subparagraph apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls below the threshold specified in this subparagraph. No local sales taxes shall be included in determining any estimated tax liability.

(D) If the estimated tax liability of a dealer for any taxable period on or after January 1, 2012, and prior to January 1, 2013, exceeds \$40,000.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subparagraph shall not apply to any dealer unless during the previous calendar year the dealer's monthly payments exceeded \$40,000.00 per month for three consecutive months or more nor shall this subparagraph apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14. This paragraph shall cease to apply to a dealer if such dealer falls below the threshold specified in this subparagraph. No local sales taxes shall be included in determining any estimated tax liability.

(E) For any taxable period on or after January 1, 2013, a dealer shall not be required to file a return and remit to the commissioner any estimated tax liability and shall be issued a refund check by the commissioner for the amount of any estimated tax liability which has been remitted and has not been credited against the amount due on the dealer's return under subsection (a) of this Code section.

(3) A dealer who in any month does not meet the applicable threshold under subparagraph (A), (B), (C), or (D) of paragraph (2) of this subsection shall be issued a refund check by the commissioner for the amount of any estimated tax liability which has been remitted and has not been credited against the amount due on the dealer's return under subsection (a) of this Code section within 30 days of the determination that such dealer is below such threshold. Prior to or in conjunction with the mailing of such refund check, the commissioner shall mail the dealer the following notice:

305 'Dear Georgia business owner,
306 This is a refund of your sales tax deposit, which is returned to you in compliance with
307 the Jobs, Opportunity, and Business Success Act of 2009 (J.O.B.S).

308 The Georgia State House and State Senate passed and the Governor signed the J.O.B.S.
309 Act (O.C.G.A. 48-8-49) believing that entrepreneurs and business owners, not
310 government, are best equipped to create jobs and sustainable economic growth for
311 Georgia.

312 We appreciate your efforts to create true economic stimulus for our great state.

313 Thank you!

314 Georgia General Assembly"

315 **SECTION 10.**

316 Said Title 48 is further amended by revising Article 4, relating to the corporate net worth tax,
317 in its entirety as follows:

318

319 "ARTICLE 4

320 48-13-70.

321 (a) On and after January 1, 2010, there shall be no corporate net worth taxes whatsoever
322 levied or collected under this article and no corporate net worth returns are required.

323 (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall
324 not be affected by the enactment of this revised article and shall continue to be governed
325 by the provisions of this article as it existed immediately prior to the effective date of this
326 Act."

327 **SECTION 11.**

328 This Act shall become effective upon its approval by the Governor or upon its becoming law
329 without such approval.

330 **SECTION 12.**

331 All laws and parts of laws in conflict with this Act are repealed.